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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WASHINGTON

KELLI GRAY, and all other similarly
situated,

Plaintiff,

v.

SUTTELL & ASSOCIATES;
MIDLAND FUNDING, LLC; MARK
T. CASE, and JANE DOE CASE,
husband and wife, KAREN HAMMER
and JOHN DOE HAMMER

Defendants.

Case No.: CV-09-251-EFS

MEMORANDUM IN SUPPORT OF
MOTION TO COMPEL DISCOVERY
RESPONSES TO PLAINTIFF'S
SECOND SET OF
INTERROGATORIES AND
REQUESTS FOR PRODUCTION
PROPOUNDED TO DEFENDANTS
MARK T. CASE and KAREN
HAMMER

MEMORANDUM IN SUPPORT OF
MOTION TO COMPEL DISCOVERY

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I. Discovery Standard

Under Rule 26(b)(1), "[p]arties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action." As a general matter, "relevance" for discovery purposes is broadly construed, and "information sought need not be admissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence." Fed. R. Civ. P. 26(b)(1); *see, e.g., Lewis v. ACB Business Services, Inc.*, 135 F.3d 389, 402 (6th Cir. 1998) ("The scope of examination permitted under Rule 26 (b) is broader than that permitted at trial.") (internal quotation marks omitted). Courts have long held that pretrial discovery is "to be accorded a broad and liberal treatment." *Hickman v. Taylor*, 329 U.S. 495, 507 (1947) ("No longer can the time-honored cry of 'fishing expedition' serve to preclude a party from inquiring into the facts underlying his opponent's case."). *See also Madden v. Turner Broadcasting Systems, Inc.*, 1998 WL 458188, at *2 (3d Cir. 1998) (same); *see also, e.g., Katz v. Batavia Marine & Sporting Supplies, Inc.*, 984 F.2d 422, 424 (Fed. Cir. 1993) ("It is a premise of modern litigation that the Federal Rules contemplate liberal discovery, in the interest of just and complete resolution of disputes."); *Epstein v. MCA, Inc.*, 54 F.3d 1422, 1423 (9th Cir. 1995) ("The Federal Rules of Civil Procedure creates a 'broad right of discovery' because 'wide access to relevant facts serves the integrity and fairness of the judicial

process by promoting the search for the truth."); *Hickman*, 329 U.S. at 507. Of course, district courts have considerable discretion in handling discovery matters. *See, e.g., Brune v. IRS*, 861 F.2d 1284, 1288 (D.C. Cir. 1988); *Laborers' Int'l Union of N. Am. v. Department of Justice*, 772 F.2d 919, 921 (D.C. Cir. 1984) ("Control of discovery is a matter entrusted to the sound discretion of the trial courts.").

II. Plaintiff's Second Set of Requests for Production and Interrogatories

On June 15, 2010, Defendants Mark Case and Karen Hammer were served with Plaintiff's Second Set of Requests for Production and Interrogatories. On July 12, 2010, Mr. Case and Ms. Hammer served their Response to Plaintiff's Second Interrogatories and Plaintiff's Second Set of Requests for Production on the plaintiff. The Defendant failed to adequately respond to the following requests:

A. Second Interrogatories Propounded to Mark Case

Interrogatories # 5,6. Mr. Case objects to these interrogatories as "overly broad, vague, unduly burdensome and intended to cause embarrassment." With the exception of his claim of "overly burdensome," it is unclear how any of the other objections apply. Mr. Case also states that "[t]he requested information can just as easily be obtained by plaintiff from court files...". It is not a valid basis for objecting or refusing to fully respond because the information is available from

1 another source if the information is in the responding party's possession, custody
 2 or control. *See Lockwood v. Shands Jacksonville Medical Center Inc.*, 2010 WL
 3 2035117 (M.D.Fla., 2010.); *Gabby v. Meyer*, 2006 WL 2794316 (E.D.Wis., 2006).
 4
 5 Notwithstanding the inadequacy of the opted production, Suttell has information to
 6 complete the request in electronic form. Suttell maintains a sophisticated fully
 7 relational database of the accounts it purchases. The database contains fields which
 8 may be searched to provide the information responsive to Plaintiff's
 9 Interrogatories. Here, the Plaintiff believes that Suttell's database can be queried
 10 to find entries by any employee who made any entry in Suttell's collection log.
 11
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13 *B. Second Interrogatories Propounded to Karen Hammer*

14 Interrogatories # 5, 6. Ms. Hammer objects to these interrogatories as
 15 "overly broad, vague, unduly burdensome and intended to cause embarrassment."
 16 With the exception of his claim of "overly burdensome," it is unclear how any of
 17 the other objections apply. Ms. Hammer also states that "[t]he requested
 18 information can just as easily be obtained by plaintiff from court files...". It is not
 19 a valid basis for objecting or refusing to fully respond because the information is
 20 available from another source if the information is in the responding party's
 21 possession, custody or control. *Id.* Notwithstanding the inadequacy of the opted
 22 production, Suttell has information to complete the request in electronic form.
 23
 24 Suttell maintains a sophisticated fully relational database of the accounts it
 25

1 purchases. The database contains fields which may be searched to provide the
2 information responsive to Plaintiff's Interrogatories. Here, the Plaintiff believes
3 that Suttell's database can be searched by the employee who made any entry in a
4 collection log.
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6 C. Second Request for Production Propounded to Mark Case

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8 Request for Production # 20, 21, 23. These discovery requests each seek
9 documentation pertaining to when and how Mr. Case determined the amount of
10 time spent by himself and other Suttell employees in *Midland Funding LLC v.*
11 *Kelli Gray* and other collection cases. Mr. Case testified that a "historical
12 analysis" was conducted regarding the reasonableness of requested fee. Mr. Case
13 has also signed many affidavits stating the approximate amount of time spent by
14 Suttell on collection cases. Either all documents related to time keeping and
15 determination of time spent have been provide (as implied by Mr. Case's answer to
16 Request for Production #20), or the records are too voluminous to produce (as
17 implied by Mr. Case's answer to Request for Production #21). Both scenarios
18 cannot be true.
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22 Plaintiff's counsel is wholly confused by Mr. Case's objection to Request
23 for Production number twenty three (23). Plaintiff's request for these documents
24 is not "vague and burdensome," as Mr. Case asserts. The documents requested, if
25 they exist at all, would not be burdensome to produce. Defendants have repeatedly

1 stated that their determination of a reasonable attorney fee is based on a “historical
2 analysis”. This request for production seeks documents that were used by the
3 defendants to generate their “historical analysis”.
4

5 D. Second Request for Production Propounded to Karen Hammer

6 Request for Production # 20, 21, 23. These discovery requests each seek
7 documentation pertaining to when and how Ms. Hammer determined the amount
8 of time spent by herself and other Suttell employees in *Midland Funding LLC v.*
9 *Kelli Gray* and other collection cases. Ms. Hammer testified that a “historical
10 analysis” was conducted regarding the reasonableness of requested fee. Ms.
11 Hammer has also signed many affidavits stating the approximate amount of time
12 spent by Suttell on collection cases. Either all documents related to time keeping
13 and determination of time spent have been provide (as implied by Ms. Hammer’s
14 answer to Request for Production #20), or the records are too voluminous to
15 produce (as implied by Ms. Hammer’s answer to Request for Production #21).
16 Both scenarios cannot be true.
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20 Plaintiff’s counsel is wholly confused by Ms. Hammer’s objection to
21 Request for Production number twenty three (23). Plaintiff’s request for these
22 documents is not “vague and burdensome,” as Ms. Hammer asserts. The
23 documents requested, if they exist at all, would not be burdensome to produce.
24
25 Defendants have repeatedly stated that their determination of a reasonable attorney

1 fee is based on a “historical analysis”. This request for production seeks
2 documents that were used by the defendants to generate their “historical analysis”.
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6 III. Certificate of Counsel

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8 I certify that I have in good faith conferred with Carl Heuber of Winston &
9 Cashatt, the attorney for the Defendant Suttell & Associates on August 6, 2010 in
10 an effort to secure the discovery disclosures without court action.
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13 Dated this the 9th day of August, 2010
14
15

16 *Kirk D. Miller, P.S.*

17 /s/ Kirk D. Miller

18 Kirk D. Miller
19 Attorney for Plaintiff
20 WSBA # 40025
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CM/ECF CERTIFICATE OF SERVICE

I hereby certify that on the 10th day of August, 2010, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF System which will send notification of such filing to the following:

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/s/ Kirk D. Miller

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